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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DR. PAUL SELINGER, MARSHA SELINGER, :

: ORDER

Plaintiffs, 08 Civ. 2096 (RMB) (GWG)

-v.- :

CITY OF NEW YORK, et al., :

Defendants. :
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GABRIEL W. GORENSTEIN, United States Magistrate Judge

The Court is in receipt of a letter dated July 23, 2008, from counsel for defendant Robert Morgenthau seeking a stay of discovery and a letter in opposition from plaintiffs dated July 25, 2008 (faxed to this office on July 28, 2008 at 6:30 p.m.).[1] In light of the absolute immunity available to prosecutors, see, e.g., Shmueli v. City of New York, 424 F.3d 231 (2d Cir. 2005), nothing in plaintiffs' letter explains how the current complaint (or any proposed amended complaint) will be able to overcome it. The plaintiffs' citation to case law involving qualified immunity is not on point. Absolute immunity is available to a prosecutor who violates even a plaintiff's "clearly established" constitutional rights.

The Court will benefit, however, from briefing on the issue and thus Morgenthau is directed to make a formal motion for a stay of discovery, which may be delayed until permission is obtained for him to file his planned motion to dismiss. Because of the importance of protecting parties entitled to immunity from discovery, however, see, e.g., Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), the Court orders that discovery is stayed against defendant Morgenthau (only) pending disposition of the formal motion for a stay. To the extent plaintiffs seek discovery from Morgenthau relating to their claims against other defendants, they may apply to lift that stay of discovery (or make an agreement with Morgenthau to do so) with respect any discovery that would otherwise have been available to them under Fed. R. Civ. P. 45 if Morgenthau were a third party.

Notably, plaintiffs have pointed to no specific prejudice from a stay other than their desire to comply with the current discovery schedule. The Court will extend that schedule, however, in the event that formal motion for a stay of discovery is ultimately denied and more time is needed to conduct the discovery as to claims against Morgenthau.

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[1] The parties' letters refer only to discovery as to Robert Morgenthau, without reference to defendant Kathryn Quinn, who is identified as an Assistant District Attorney. Because the absolute immunity defense would apply equally to Quinn, references in this Order to Morgenthau should be read to include Quinn.

SO ORDERED.

Dated: July 29, 2008
New York, New York

GABRIEL W. GORENSTEIN
United States Magistrate Judge